

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

_____)
Lifeline and Link-Up)
_____)

WC Docket No. 03-109

PETITION OF AT&T CORP. FOR LIMITED RECONSIDERATION

Pursuant to the Section 1.429 of the Commission's Rules, 47 C.F.R. § 1.429, AT&T Corp. ("AT&T") respectfully requests that the Commission reconsider one aspect of its April 29, 2004, Report and Order and Further Notice of Proposed Rulemaking ("*April 29 Order*") which modified certain rules governing the Lifeline and Link-Up low income support mechanisms.¹

In its Comments, AT&T asked the Commission to modify its rules, which provide for carriers to be certified *once* as eligible telecommunications carriers ("ETCs") for both Lifeline and Link-Up (collectively "Low Income Support") and High Cost Support, and to provide instead for separate certification as an ETC for Low Income Support.² AT&T explained that the two different programs serve distinctly separate purposes and that the considerations relevant to eligibility for High Cost Support, do not apply on the same terms to Low Income Support.³

¹ *In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, FCC 04-87, released April 29, 2004. A summary of the April 29 Order was published in the Federal Register on June 22, 2004. *See* 69 Fed. Reg. 34590 (June 22, 2004).

² Comments of AT&T Corp., Lifeline and Link-Up, WC Docket No. 03-109, filed August 18, 2003, at 3. *See* Reply Comments of AT&T Corp., Lifeline and Link-Up, WC Docket No. 03-109, filed September 2, 2003, at 2.

³ AT&T Comments at 2-6; *see* AT&T Reply at 2-3.

In its *April 29 Order* [¶ 54], the Commission addressed this issue on somewhat different terms than on which it had been raised by AT&T. In the Commission's words, it "decline[d] to establish rules that would provide Lifeline/Link-Up support directly to carriers who are not ETCs." In a brief, three-sentence discussion, the Commission stated that (i) "such rules would be inconsistent with Section 254(e), which states that only ETCs may receive universal service support, and (ii) that extending Low Income Support to carriers that do not meet all the qualifications for an ETC "would also serve as a disincentive for other carriers to comply with their ETC obligations."⁴ The Commission stated that it agreed with the recommendation of the Joint Board, which had also addressed the issue in terms of providing federal support to carriers who had not qualified as ETCs. The Joint Board had acknowledged the authority of the Commission to extend support payments to non-ETCs, but recommended the Commission not do so as a policy matter.⁵ Also, it cited considerations of "administrative convenience and efficiency" in urging no change in existing procedures.⁶

AT&T respectfully urges that upon closer analysis, neither of the reasons cited by the Commission justifies denial of Low Income Support to carriers who provide Lifeline services and it should reconsider this aspect of the *April 29 Order* and amend its rules as AT&T requested. First, it appears there may have been a misunderstanding as to the exact nature of the relief AT&T sought. The Order construes AT&T's Comments as

⁴ *April 29 Order*, ¶ 54.

⁵ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 18 FCC Rcd. 6589, 6617-18 [¶ 61] (2003) ("*Recommended Decision*").

⁶ *Id.*

seeking a rule that would allow it to receive Low Income Support funds without first having to qualify as an ETC. This, the Order found, would be inconsistent with Section 254(e), which specifies that “only” ETCs, may receive universal service support. AT&T, however, did not and does not seek an exception to the requirements of Section 254(e) or 214(e). Nor does AT&T question the inclusion of Lifeline service as part of the supported services required for ETC designation for High Cost Support under the Commissions rules. Rather, it sought to bifurcate the certification process so that a carrier may be certified as an ETC solely for the purpose of receiving Low Income Support, without also having to qualify for receipt of High Cost Support.⁷

As AT&T showed in its Comments, it is in the public interest that federal Low Income Support be made available to the broadest set of carriers, so that those carriers have an incentive to market their services to eligible customers, thereby increasing telephone subscribership and furthering the overriding goal of universal service. The current practice of ETC certification, under which there is a single certification, with the same set of requirements, for both Low Income Support and High Cost Support, does not provide such an incentive. In most states, competitive local exchange carriers (“CLECs”), like AT&T, are required by state law to provide Lifeline Service at below cost rates as a condition to local market entry. While the state and federal Lifeline/Link-Up programs do provide a mechanism to compensate carriers and

⁷ See AT&T Comments at 2, 4; AT&T Reply at 1, 3. In earlier Comments filed in a related proceeding AT&T had urged that compliance with Section 214(e) should not be required to receive Low Income Support. See AT&T Comments, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, filed December 31, 2001. This may have given rise to the misunderstanding. In this proceeding, however, AT&T did not seek an exemption from Section 214(e), but rather, sought separate certification for Low Income Support.

keep them whole, in implementing these programs, many states impose onerous conditions that should not be a prerequisite for eligibility for Low Income Support, but are relevant only to High Cost Support. Because there is a single certification procedure for both, and compliance with state ETC requirements is often so costly that it provides a barrier to entry, AT&T (and other CLECs) often provide Lifeline service without applying for ETC certification because it is less expensive to absorb the loss on each Lifeline customer. This is harmful not only to local competition, but to the goal of increased subscribership because if a carrier is providing service at a loss to a class of customers, there is a *disincentive*, to market services to those customers.

In meeting its Lifeline obligations, AT&T provides Lifeline customers with the same basic local service as it provides to customers who pay full, undiscounted rates for that service. Low Income Support should thus be provided to all carriers who meet the basic statutory requirements of Section 214(e)(1) of the Act for ETC designation, namely, providing Lifeline service to income eligible subscribers.⁸ Any additional state requirements should apply only as a condition to receiving ETC designation for High Cost Support. AT&T urges the Commission to reconsider its *April 29 Order*, and to the full extent of its authority, encourage or require state Commissions to certify *all* carriers who comply with Section 214(e) with respect to Lifeline services as eligible to receive Low Income Support, regardless of whether they meet the requirements for High Cost Support.⁹

⁸ 47 U.S.C. § 214(e).

⁹ In *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999), the Court held that the Commission lacked statutory authority under Section 214(e) to impose on states an outright prohibition against placing additional eligibility

As noted, the Commission currently requires carriers to be certified as ETCs *once* for both Low Income Support and High Cost Support. Section 214(e) requires ETCs to offer and advertise their supported services throughout the “service area” as defined in Section 54.207 of the Commission’s Rules.¹⁰ The High Cost Support mechanisms and Low Income Support mechanisms, however, serve very different purposes. High Cost Support is meant to support carriers serving high cost areas without regard to a customer’s income level. It is a substitute for previous regulatory techniques such as geographic rate averaging and implicit support from access charges.¹¹ Even with geographic disaggregation of High Cost Support, there has still been concern about the potential for a carrier to “cherry-pick,” *i.e.*, to receive support for serving customers in high cost areas while actually providing service only in the lower cost portions of a service area.

Lifeline/Link-Up Support, by contrast, aims to reduce the price of local service for low income consumers who are not necessarily in a high cost area and,

requirements on carriers who were otherwise eligible to receive federal universal service support. The Commission, however, has indisputable authority to make recommendations and encourage states to adopt practices that promote the goals of the Act, including Universal Service. For example, in its *April 29 Order*, ¶ 52, the Commission adopted the Joint Board’s recommendation to “encourage” states to consider changes in rules governing Lifeline service to customers disconnected for non-payment of toll charges.

¹⁰ 47 C.F.R. § 54.207.

¹¹ *See, e.g., MAG Order*, 16 FCC Rcd. 19613, 19625 (2001) (noting that, “historically, [access in high-cost areas] has been achieved both through explicit monetary payments and implicit support flows to enable carriers to serve high-cost areas at below cost rates” and that “Congress established . . . the principle that the Commission should create explicit universal service support mechanisms that will be secure in a competitive environment”).

indeed, may be urban or rural. There is no geographic “cherry-picking” opportunity with respect to Low Income Support because the support is not tied to high costs of service. So long as the low income customer chooses a particular carrier as its service provider (and that carrier provides the eligible low income consumer with rate discounts commensurate with the amount of Low Income Support it would receive), there is no reason to deny that carrier Low Income Support on behalf of the customer. There is no possibility of abuse or regulatory gamesmanship and no purpose to be served by denying compensation to the carrier to keep it whole.

There are a number of reasons why a new entrant might opt out of seeking ETC designation for High Cost Support. First, especially in non-rural serving areas, there may be no High Cost Support, or only minimal support available. A carrier may find that the administrative burdens and expense associated with seeking such minimal support are simply not justified. Yet, there is no reason why an entrant that serves low income consumers in that service area should be denied Low Income Support simply because it chooses not to seek High Cost Support. This is particularly the case in those states (*e.g.*, Minnesota, Pennsylvania and Wisconsin) that require *all* LECs (whether or not ETCs) to provide reduced Lifeline rates -- meaning that non-ETCs must provide service at lower rates to eligible Lifeline customers, but do not receive Low Income Support. Especially in such states, denying Low Income Support to competitive entrants, while granting such support to incumbents by virtue of their default ETC designation is not competitively neutral. Rather, it places the incumbent at an unfair advantage and restricts consumer

choice among service providers by failing to ensure seamless support if a low income consumer elects to change local carriers.¹²

AT&T thus supports *separate* ETC designations for the High Cost and Low Income Support Mechanisms. Instead of a combined ETC designation, the Commission should allow receipt of federal Low Income Support whenever a carrier agrees to provide the supported services as defined by the Commission's rules, *see* 47 C.F.R. § 54.101, *or* has qualified for support under parallel state programs. This would ensure that carriers willing to provide the federally defined services become, at a minimum, eligible for *federal* Low Income Support.

The Commission's and Joint Board's understandable concern that carriers seeking federal Lifeline support "comply with their ETC obligations", as specified by 47 C.F.R. § 54.101 of the Commission's rules, is fully addressed by AT&T's proposal.¹³ To the best of AT&T's knowledge, all states with their own separate state Lifeline programs seek to avail themselves of additional federal support and incorporate the FCC's definition of the supported services a carrier must be willing to provide to be eligible for state Low Income Support. Thus, under AT&T's proposal, carriers would have to continue to meet the same Lifeline service obligations that they meet now. For this same reason, there would *not* be a significant administrative burden if the *federal* ETC designation – made by the states in most instances – conformed to separate

¹² To the extent that a CLEC captures a Lifeline customer from the ILEC, the ILEC, of course, will no longer receive the Low Income Support associated with that customer. However, that support does not currently "follow the customer" to the CLEC under Section 54.307 of the Commission's rules, unless the CLEC has been designated an ETC. This asymmetry itself is a competitive distortion and provides an unwarranted advantage to ILECs.

¹³ *April 29 Order*, ¶ 54; *Recommended Decision* at 6617 [¶ 61].

eligibility for *federal* Lifeline support. Additionally, if a carrier meets *state* Lifeline carrier eligibility criteria, there is no reason it should not automatically qualify for *federal* Lifeline support.

To the extent some states have onerous criteria for carriers to become eligible for *state* Lifeline support, that should not preclude certification for *federal* support. For example, Texas and West Virginia have auto-enroll requirements for their state Lifeline programs. The costs for new entrants to modify their systems so that they can auto-enroll customers may be cost-prohibitive relative to the number of Lifeline customers they expect to serve. And, in Wisconsin, recipients of state Lifeline funds must offer public interest payphones to qualify for support. Even if a carrier cannot comply with these types of state requirements, it should have the right to receive federal Low Income Support if it is providing the federally-defined supported services.

Sound public policy strongly counsels that a carrier entering local exchange markets, whether in high cost or low cost areas, should be eligible to obtain federal support for low income consumers living in those areas, particularly when the state has found the carrier to be eligible for corresponding state support. Carriers wishing to provide Lifeline and Link-Up services should be encouraged rather than stymied in their efforts to obtain universal service support so as to maximize the availability of these programs and increase subscribership. There is no sound reason to continue the current practice, whereby carriers who actually provide Lifeline services at below-cost Lifeline rates do not have a practical means for obtaining the federal Low Income Support that is intended to apply in precisely this situation.

CONCLUSION

For the reasons stated above, the Commission should reconsider its *April 29 Order* and streamline its rules for receiving federal Lifeline and Link-Up support as set forth herein.

Respectfully Submitted,

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